

REMARKS

This Amendment is filed with an RCE and is responsive to the Office Action.¹ Claims 1, 3, 5-10, 13-18, 22-32 and 34 were presented for examination. Claims 2, 4, 11, 12, 19-21, and 33 were previously canceled. All claims are rejected as detailed below. Claims 1, 10, 18, 28 and 34 are independent claims and each is amended herein. Support for the amendments can be found in the application, as filed. See, for example, Fig 8 and discussion associated therewith. Claims 1, 3, 5-10, 13-18, 22-32 and 34 are pending.

The Rejections:

Claims 1, 3, 5-10, 13-18, 22-32 and 34 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement.

Claims 1, 3, 5, 9, 28 and 30-32 are rejected under 35 U.S.C. § 103(a) as being un-patentable over Farris et al., U.S. Patent No. 5,751,789 (referred to hereinafter as “Farris”) in view of Knight, U.S. Patent Application Publication No. 2007/0060202 (referred to hereinafter as “Knight”).

Claim 6 is rejected under 35 U.S.C. § 103(a) as being un-patentable over Farris in views of Knight and well known Prior Art (MPEP 2144.05).

¹ The Office Action may contain a number of statements characterizing the cited references and/or the claims which Applicant may not expressly identify herein. Regardless of whether or not any such statement is identified herein, Applicant does not automatically subscribe to, or acquiesce in, any such statement. Further, silence with regard to rejection of a dependent claim, when such claim depends, directly or indirectly, from an independent claim which Applicant deems allowable for reasons provided herein, is not acquiescence to such rejection of that dependent claim, but is recognition by Applicant that such previously lodged rejection is moot based on remarks and/or amendments presented herein relative to that independent claim.

Claim 7 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Knight and Ehreth U.S. Patent No. 6,246,750 B1 (referred to hereinafter as “Ehreth”).

Claim 8 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Knight and McKenna et al. U.S. Patent No. 6,829,486 B2 (referred to hereinafter as “McKenna”).

Claims 10, 15, 16, 17, 18 and 22-26 are rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina et al., U.S. 2004/0214569 A1 (referred to hereinafter as “Cardina”) in view of Knight.

Claim 14 is rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina in views of Knight, and Sawada, U.S. 2005/0148315 A1 (referred to hereinafter as “Sawada”).

Claim 27 is rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina in views of Knight, and McKenna.

Claim 29 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Knight and Patron et al., (U.S. 2005/0063333 A1) (referred to hereinafter as “Patron”).

Claims 13 and 22 are rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina in view of Knight, and further in view of well known prior art (MPEP 2144.05).

Claim 34 is rejected under 35 U.S.C. §102(e) as being anticipated by Knight.

Applicant respectfully traverses these rejections, at least because the cited references taken individually or in any reasonable combination do not disclose or suggest all claim limitations of each pending claim for the following reasons.

The 35 U.S.C. § 112 Rejection:

Applicant respectfully disagrees with this rejection because there is sufficient support in the specification to support “immobile wireless transceivers” which are described in the specification as being fixedly located, for example, on the outside of a subscriber’s building or home. However, the point is now moot because Applicant has removed the word “immobile” from all pending claims by way of this amendment, the word no longer being used in the claims. Therefore, the 35 U.S.C. § 112, first paragraph, rejection of these claims has been overcome and it is respectfully requested that this rejection be withdrawn.

The 35 U.S.C. 103(a) Rejection:

Independent Claim 1:

Consider, first, independent claim 1 which is rejected under 35 U.S.C. § 103(a) as being un-patentable over Farris in view of Knight. Claim 1 recites, *inter alia*:

“wherein the wireless transceiver is configured to relay data from other wireless transceivers that have lost connectivity to the wireline network, at least one of said other wireless transceivers being connected to said wireless transceiver through one or more of said other wireless transceivers when said data is being relayed, said other wireless transceivers having been wireline-connected to the wireline network during normal operation.”

(emphasis added) Applicant has amended claim 1 which clearly expresses that the “wireless transceiver is configured to relay data from other wireless transceivers that have lost connectivity to the wireline network, at least one of said other wireless transceivers being connected to said wireless transceiver through one or more of said other wireless transceivers.” This is shown in Applicant’s Fig. 8, in which the wireline connections to subscribers C and D have both failed but where subscribers B and D are not within range of each other for direct wireless connectivity. Subscriber D may connect with subscriber B, but only by relaying its wireless data through subscriber C. This is not disclosed or suggested by Farris or Knight.

First of all, the Office Action, pg 6, says that Farris does not particularly disclose wherein the wireless transceiver is configured to relay data from other wireless transceivers that have lost connectivity on the wireline network with the service provider. Applicant agrees. The Office Action then relies on Knight to teach this.

Knight teaches a method and system for maintaining communication from a cell site (a building that houses equipment used for wireless communication, Knight ¶ 7) that lost its wireline connection. This is accomplished by transporting, via a mobile vehicle, a temporary microwave antenna “jumper” to that cell site in order to microwave-transfer that cell site’s otherwise lost communication to another cell site that has not lost its wireline connection (Knight ¶’s 14/27). In other words, the cell site with the failed wireline uses the operating wireline of the other cell site, and accomplishes this by a temporary microwave connection.

The Office Action reads microwave antenna units 109 and 116 in Knight on Applicant’s recited “wireless transceivers.” It also reads the MTSO (Mobile Telephone

Switching Office) switching center in Knight on Applicant's recited "service provider."

It also reads the cut T1 cable 127 associated with Knight's cell site 119 as equivalent to Applicant's recited "connectivity is lost on the wireline network." (*See*: Office Action pg 7) Thus, microwave antenna unit or "wireless transceiver" 116 is associated with the cut T1 cable 127. However, there is no teaching or suggestion in Knight of also relaying, through Knight's microwave antenna unit 116, other data from additional wireless transceivers that have also lost connectivity on the wireline network with the service provider.

Therefore, Knight does not teach or suggest: "wherein the wireless transceiver is configured to relay data from other wireless transceivers that have lost connectivity to the wireline network, at least one of said other wireless transceivers being connected to said wireless transceiver through one or more of said other wireless transceivers when said data is being relayed, said other wireless transceivers having been wireline-connected to the wireline network during normal operation" as recited in claim 1.

Since Farris, admittedly, does not teach or suggest this limitation and since Knight, as shown above, does not teach or suggest this limitation, any reasonable combination of Farris and Knight also does not teach or suggest this limitation. All other cited references do not cure this deficiency of Farris and Knight. Accordingly, the 35 U.S.C § 103(a) rejection of claim1 should be withdrawn and the claim allowed.

All claims that are dependent from claim 1, claims 3 and 5-9, are likewise allowable, at least for reasons based on their dependencies from an allowable base claim.

Independent claim 10:

Consider, next, independent claim 10 which is rejected under 35 U.S.C. §103(a)

as being un-patentable over Cardina in view of Knight. Claim 10 recites, *inter alia*:
“when the wireline connection fails, automatically establishing a substitute wireline connection to the network service provider over a wireless connection relayed from the network subscriber through more than one other network subscriber, one said more than one other network subscriber having separate normal wireline-connectivity to the network service provider.” (emphasis added)

The Office Action states: “But, Cardina does not particularly disclose wherein the connection to the network service provider is established over a wireless connection relayed from the network subscriber directly to one who has, or through more than one other network subscriber who each has separate wireline-connectivity to the network service provider as normal connectivity.” (Office Action, pg 14) Applicant agrees.

The Office Action then applies Knight, as discussed above with respect to claim 1. However, Knight fails to disclose or suggest “when the wireline connection fails, automatically establishing a substitute wireline connection to the network service provider over a wireless connection relayed from the network subscriber through more than one other network subscriber, one said more than one other network subscriber having separate normal wireline-connectivity to the network service provider” as recited in claim 10, for reasons given above with respect to claim 1.

Since Cardina, admittedly, does not teach or suggest this limitation and since Knight, as shown above, does not teach or suggest this limitation, any reasonable combination of Cardina and Knight also does not teach or suggest this limitation. All

other cited references do not cure this deficiency of Cardina and Knight. Accordingly, the 35 U.S.C § 103(a) rejection of claim 10 should be withdrawn and the claim allowed.

All claims that are dependent from claim 10, claims 13-17, are likewise allowable, at least for reasons based on their dependencies from an allowable base claim.

Independent claim 18:

Independent claim 18 is rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina in view of Knight. Claim 18 recites, *interalia*: “providing backup network connectivity to said one node via a wireless network by wirelessly relaying data directly from said one node to another node in the plurality of network nodes which had an active wireline connection to the network service provider and which is wirelessly connected to yet another node in the plurality of nodes that has an active wireline connection to the network service provider.”

The Office Action states: “But, Cardina does not particularly disclose wherein said back up network connectivity is via a wireless network, implemented over the remainder of the plurality of network nodes permanently located at residences of subscribers of the network service provider, said backup connectivity provided by wirelessly relaying data directly from said one node to another node in the plurality of networks nodes which has an active wireline connection to the network service provider or which is wirelessly connected to yet another node in the plurality of nodes that has an active connection to the network service provider.” (Office Action, pg 16) Applicant agrees.

The Office Action then applies Knight, as discussed above with respect to claim

10. However, Knight fails to disclose or suggest “providing backup network connectivity to said one node via a wireless network by wirelessly relaying data directly from said one node to another node in the plurality of network nodes which had an active wireline connection to the network service provider and which is wirelessly connected to yet another node in the plurality of nodes that has an active wireline connection to the network service provider” as recited in claim 18.

Since Cardina, admittedly, does not teach or suggest this limitation and since Knight, for reasons given above with respect to claim 1, does not teach or suggest this limitation, any reasonable combination of Cardina and Knight also does not teach or suggest this limitation. All other cited references do not cure this deficiency of Cardina and Knight. Accordingly, the 35 U.S.C § 103(a) rejection of claim 18 should be withdrawn and the claim allowed.

All claims that are dependent from claim 18, claims 22-27, are likewise allowable, at least for reasons based on their dependencies from an allowable base claim.

Independent claim 28:

Consider, next, independent claim 28 which is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in view of Knight. Claim 28 recites, *inter alia*:

“wherein the wireless transceiver is configured to relay data from another wireless transceiver in another NIU to which its respective one of said wireline connections has failed, the other wireless transceiver relaying said data from yet another wireless transceiver that is wireline-connected to the wireline network.”

Applicant submits that at least the above-quoted limitation of claim 28 is not disclosed or suggested by Farris in view of Knight for the same reasons as, or for similar reasons to, those given above with respect to claim 1. All other cited references do not cure this deficiency of Farris and Knight. Accordingly, the 35 U.S.C § 103(a) rejection of claim 28 should be withdrawn and the claim allowed.

All claims that are dependent from claim 28 (claims 29-32) are likewise allowable, at least for reasons based on their dependencies from an allowable base claim.

The 35 U.S.C. § 102(e) Rejection:

Independent Claim 34:

Claim 34 recites, *inter alia*: “providing, when said first wireline communication fails, substitute wireline communication for said first network subscriber by way of said second wireline communication by wirelessly relaying data indirectly between two nodes through a third node associated with a third network subscriber with failed wireline communication, one of said two nodes located in or on premises of said first network subscriber and the other of said two nodes located in or on premises of said second network subscriber, said other of said two nodes relaying said data with said network service provider over a wireline otherwise normally carrying only said second wireline communication.” (emphasis added) Claim 34 is rejected under 35 U.S.C § 102(e) as being anticipated by Knight.

MPEP § 2131 states that to anticipate a claim, the reference must teach every element of the claim. “A claim is anticipated only if each and every element as set forth

in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the ...claim.” *See Richardson v. Suzuki Motor Co.*, 868 F. 2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). Knight does not teach or suggest the above-quoted limitation of claim 34 and, therefore, does not anticipate claim 34. The other cited references do not cure this deficiency in Knight. Therefore, Applicant respectfully requests that the 35 U.S.C § 102(c) rejection of claim 34 be withdrawn and the claim allowed.

Applicant does not acquiesce in the combinability of these references. As previously mentioned in a prior response the Office Action’s reasons for combining Farris and Knight and for combining Cardina and Knight appear to be merely conclusory. The Office Action merely presents certain advantages of Applicant’s claimed subject matter, which can be appreciated after a reading of Applicant’s claims, and concludes that it would be obvious to combine the references to achieve those advantages. This approach to combining references relies on impermissible hindsight. Applicant reserves its rights to present full arguments rebutting these reference-combinations, as well as others, in subsequent responses if need be. Applicant views its instant amendment and remarks as sufficient to overcome the rejections of all pending claims.²

² As Applicant’s remarks with respect to the Examiner’s rejections are sufficient to overcome these rejections, Applicant’s silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, assertions as to dependent claims, etc.) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such assertions/requirements in the future.

CONCLUSION

Reconsideration and allowance of the pending claims are respectfully requested based on the above amendments and remarks. It is respectfully submitted that all claims and, therefore, this application are in condition for allowance and prompt passage to issue is respectfully requested.

To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136 is hereby made, the fee for which should be charged to deposit account number 07-2347. Please charge any other fees due, or credit any overpayment made to that account.

Respectfully submitted,

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